IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 381 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKKUMAR J PANDYA

Versus

SUYOG CO OP HOUSING SOC LTD & 2

Appearance:

MR SM SHAH FOR MR KV SHELAT for Appellant

MR SB VAKIL FOR MR BG JANI for Respondents No. 1

MR HASMUKH PATEL AGP for Respondent Nos.2-3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 21/03/2002

C.A.V. JUDGEMENT

1. This is an appeal under Section 104 of the Civil Procedure Code read with Order 43, Rule 1(r) of the Civil

Procedure Code filed by the original defendant No.1 in Special Civil Suit No.236 of 1993, which is still pending on the file of learned Civil Judge (S.D.), Ahmedabad (Rural), Mirjapur, at Ahmedabad challenging an order dated 24/2/1994 passed below application Ex.5 in the aforesaid suit.

2. The original defendant No.1 is the appellant, while plaintiff and defendant Nos.2 and 3 are the respondent Nos. 2 and 3 respectively (For the sake of convenience parties will be referred to hereinafter as the plaintiff and respective defendants.

3. The facts leading to this Appeal from Order in a nutshell are as follows :-

3.1 On or about 29/7/1993, original plaintiff filed aforesaid Special Civil Suit No.236 of 1993 against the defendant Nos.1 to 3 mainly for following reliefs;

[a] A decree of mandatory injunction directing defendant No.2 to grant a necessary permission under Section 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 (For short the "ULC Act") giving exemption to the suit land described in para-2 of the plaint from operation of Chapter-III of the said Act and also grant a permission to sell the suit land by defendant No.1 to the plaintiff.

[b] As an alternative prayer, plaintiff has prayed for a decree of mandatory injunction directing defendant No.2 to take appropriate decision after giving an opportunity to the parties and the Commissioner, who may be appointed by the trial Court in the suit for the application under Section 20 of the Act, which is pending before the defendant No.2 as admitted by defendant No.2 in his letter No.UK/2080-700/15-V.1 dated 20/4/1987.

[c] For a decree for specific performance for the suit agreement dated 31/1/1978 executed by the defendant No.1 in favour of the plaintiff with a further direction to defendant No.1 to execute a final sale deed of the suit land in favour of the plaintiff by receiving a consideration of Rs.3,15,650/-- from the plaintiff and in case, if defendant No.1 fails to execute a final sale deed, for appointment of Court Commissioner to execute the sale deed and get the sale registered

for and on behalf of the trial Court.

[d] In case, if the Court refuses to grant a decree for specific performance, then a money decree to recover Rs.1,32,41,000/-- with interest at the rate of 18% P.A. in favour of the plaintiff executable against the defendant No.1.

[e] For a perpetual prohibitory injunction restraining defendant No.1 from transferring, selling or assigning the suit land by way of sale, mortgage, gift etc. to any third party and also from transferring the actual physical possession of the suit land to any third party.

[f] For perpetual prohibitory injunction restraining defendant No.1 from acting against the terms and conditions of agreement for sale dated 31/1/1978.

[g] For perpetual prohibitory injunction restraining defendant No.2 disposing the ULC application dated 30/4/1980 with a negative decision.

3.2 On the day on which the plaintiff filed the aforesaid suit, plaintiff also submitted an application Ex.5 for an interim injunction, pending the suit restraining defendant No.1 from transferring, selling or assigning the suit land, which is described in para-2 of the application by way of sale, mortgage, gift etc. to any third party and also from transferring the physical possession of the suit land to any third party and also from acting against the terms and conditions of an agreement of sale-deed dated 31/7/1978.

The plaintiff also prayed for an interim injunction restraining defendant No.2, pending the suit from disposing the ULC application dated 30/4/1980 with a negative decision.

By aforesaid application below Ex.5, the plaintiff also prayed for an interim mandatory injunction directing the defendant No.1 to initiate the proceedings before the defendant No.2 for the provisions under the Act and also to furnish all necessary information and produce all the documents and make a representation before defendant No.2 for disposal of the application under Section 20 of the Act made by defendant No.1 and the plaintiff on 30/4/1980.

3.3 On that very day i.e. 29/7/1993, the learned Judge of the trial Court was pleased to grant an

ad-interim injunction restraining defendant No.1 and/or his Power of Attorney holder Shri Dinesh Jayantkumar Thakkar from transferring or alienating the suit land bearing Survey No.428/1, situated on the outskirts of village Vejalpur by way of sale and also from selling or transferring the physical possession of the suit land to any third party. The learned Judge of the trial Court also directed the defendant No.1 and his Power of Attorney holder to maintain a status-quo with regard to suit land as prevailing on the date of the suit. On that day, the learned Judge of the trial Court also granted an ad-interim injunction restraining defendant No.2 from exparte disposing of application dated 30/4/1980 jointly made by plaintiff and defendant No.1 and further directed to maintain a status-quo with regard to the said land till the final decision on application Ex.5 The learned Judge of the trial Court was also pleased to issue urgent show cause notice against the defendants.

3.4 Both the parties submitted respective affidavits and relevant documents in support of their respective cases. Thereafter, after hearing arguments of learned advocates for both the parties, the learned Judge of the trial Court has been pleased to come to conclusions that plaintiff has got a prima facie case and balance of convenience would be in favour of the plaintiff, if injunction is granted and plaintiff will sustain an irreparable injury, if injunction is refused. On the basis of such conclusions, the learned Judge of the trial Court, by passing an impugned order dated 24/2/1994 granted an interim injunction restraining defendant No.1, his agent, servant from transferring the suit land to any party by way of sale. The learned Judge of the trial Court also granted an interim injunction in favour of the plaintiff restraining defendant Nos.2 and 3 from taking exparte decision or any action on an application dated 30/4/1980 submitted under the provisions of the said Act, without making due inquiry and investigation. The learned Judge of the trial Court also granted an interim mandatory injunction directing the defendant No.1 and his Power of Attorney holder to furnish all necessary documents in the proceedings initiated under the provisions of the Act to defendant Nos.2 and 3 before whom that proceeding is pending. The aforesaid order was passed, pending the final decision in the suit.

4. As against that order dated 24/2/1994, the original defendant No.1 has preferred this present Appeal as stated in para-1 hereinabove. This appeal came to be admitted on 10/3/1995. It appears from the record that in connection with Civil Application No.4477 of 1994,

this Court issued a Rule on 10/3/1995.

5. Before this appeal was taken up for final hearing, the learned advocate for the appellant has produced a paper-book containing copies of all relevant documents (pages 1 to 128) in one file. Similarly, the respondent No.1 has produced a paper-book containing copies of few documents and that paper-book run from page Nos.120 to 129. The learned senior advocate Mr.S.M.Shah has produced a simple note containing sequence of events which took place right from 31/1/1978 to 24/2/1994.

6. Heard Mr.S.M.Shah, learned senior advocate for and on behalf of Mr.K.V.Shelat, learned advocate for the appellant, Mr.S.B.vakil, learned senior advocate for and on behalf of Mr.B.G.Jani, learned advocate for the respondent No.1 and Mr.Hasmukh Patel, learned AGP for respondent nos.2 and 3, in detail, at length.

7. This Appeal from Order is filed by affected defendant No.1 by challenging an order dated 24/2/1994 passed below application Ex.5 in the aforesaid suit. Admittedly, the said application below Ex.5 was presented by the plaintiff under Order 39, Rules 1 and 2 of the Civil Procedure Code for an interim injunction, pending the suit. That application was submitted to seek equitable relief from the trial Court and the trial Court after examining the material on record passed a discretionary order in favour of the plaintiff. Such a discretionary order is expected to be a judicial order passed by the learned Judge of the trial Court, keeping in mind, the well settled principle of law with regard to interim injunction, which is nothing but an equitable relief. Under the circumstances, it is necessary to know as to what is ambit and scope of such Appeal from Order and what are the powers of Appellate Court, while dealing with such Appeal from Order.

8. In the case of Wander Ltd. and Another v/s. Antox India P. Ltd., reported in 1990 (Supp) Supreme Court Cases 727. The Hon'ble Supreme Court has held in para-14 at page-733 as follows.

> "14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had

ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar,J. in Printers (Mysore Private Ltd. v. Pothan Joseph.

"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton '.. the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

9. In a recent case of Laxmikant V. Patel v/s. Chetanbhai Shah and another, reported in 2001 AIR SCW 4989. The Hon'ble Supreme Court has held in para-17 at page-4997 as follows :-

"17. We are conscious of the law that this Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the trial Court and substitute its own discretion therefor except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the Court under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle.

Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion [(See Wander Ltd. v. Antox India P. Ltd., 1990 (Supp) SCC 727 and N.R.Dangre v. Whirpool Corporation, 91996) 5 SCC 714)]. However, the present one is a case falling within the well accepted exceptions. Neither the trial Court nor the High Court have kept in view and applied their mind to the relevant settled principles of law governing the grant or refusal of interlocutory injunction in trade mark and trade name disputes. A refusal to grant an injunction in spite of the availability of facts, which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a latter stage. The discretion exercised by the trial Court and the High Court against the plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the plaintiff could not have been refused, therefore, it becomes obligatory on the part of this Court to interfere."

10. In the case of Dalpatkumar and another v/s. Prahalad and others, reported in 1992 (1) S.C.C. 719. The Hon'ble Supreme Court has observed in para-6 (Page-721 - 722) as follows :-

"Undoubtedly, in a suit seeking to set aside the decree, the subject matter in the earlier suit, though became final, the Court would in an appropriate case grant ad interim injunction when the party seeks to set aside the decree on the ground of fraud pleaded in the suit or for want of jurisdiction in the Court which passed the decree. But the Court would be circumspect before granting the injunction and look to the conduct of the party, the probable injuries to either party and whether the plaintiff could be adequately compensated if injunction is refused."

Keeping in mind, the aforesaid legal position, the rival contentions of both the parties are considered by this Court.

11. To consider the contentions taken by both the parties, it is necessary to note some admitted facts for which there is no serious dispute from either side.

(A) A base of the suit i.e. agreement for sale is at pages 53 to 59 in paper-book supplied by the appellant. This agreement for sale (Banakhat) was executed by defendant No.1 in favour of 4 persons, who were promoters of Shri Suyog Co-operative Housing Society (Proposed), Ahmedabad.

(B) On 31/1/1978, the stamp paper for this Banakhat was purchased by the defendant No.1.

(C) On 30/3/1978, Shri Suyog Co-operative Housing Societies (Proposed) of Vejalpur, Taluka, City and District Ahmedabad came to be registered under Section 10 of the Gujarat Co-operative Societies Act, 1961. A note has been made in the certificate, which is at page 118, to the effect that the said Mandali was of Members of Backward Class it is registered without land.

(D) There are about 12 terms and conditions in this Banakhat.

(E) On 2/10/1978, defendant No.1 put an endorsement below aforesaid Banakhat and extended the period stated in Condition No.2 of Banakhat from 12 months to 24 months.

(F) On 28/1/1980, defendant No.1 again extended the period stated in Condition No.2 of Banakhat from 12 months to 27 months.

(G) Condition No.2 in the said Banakhat was to the effect that period of 12 months was fixed for obtaining a permission from the Government and also for initiating a proceeding to get the title cleared for the land described in aforesaid Banakhat.

(H) On 30/4/1980, the present plaintiff and defendant No.1 jointly submitted an application to the Government to grant an exemption under Section 20 of the Act.

(I) On 21/8/1982, the Government of Gujarat i.e. defendant No.3 passed an order (Page 119) for said

application dated 30/4/19809 by which the said application dated 30/4/1980 came to be rejected.

(J) On 7/5/1991, the defendant No.1 addressed a notice (Page 60) to promoters of Shri Suyog Co-operative Housing Society (Proposed), Ahmedabad.

(K) On 30/3/1993, as stated in para-13 of written statement of defendant at page 36 to 52, the promoters did not accept that notices dated 7/5/1991, as a result of which either new notice or same notice was sent to plaintiff.

(L) On 8/4/1993, the plaintiff by its reply dated 8/4/1993 at pages 64 to 67 replied the notice of defendant No.1, sent on 30/3/1993.

(M) On or about 28/7/1993, the plaintiff filed the aforesaid Special Civil Suit for reliefs stated in para-3 hereinabove.

12. Mr.S.M.Shah, learned advocate for the appellant has argued on the following points :-

[a] The base of the suit i.e. agreement for sale in favour of proposed Housing Society, on the date of the suit was solely void, nullity and unenforceable and, therefore, the plaintiff is not entitled to any relief. To enlarge his arguments, he has urged that agreement for sale, which is at page-53 on the paper-book supplied by the appellant (Mark-3/2) was executed by the defendant No.1 i.e. present appellant in favour of Shri Suyog Co-operative Housing Society (Proposed), Ahmedabad and not in favour of plaintiff. As per Mark-3/2, the said Housing Society (Proposed) was represented by its four chief promoters. Admittedly, on 31/1/1978, the said society was not got registered under the provisions of the Gujarat Co-operative Societies Act, 1961. It is also an admitted fact that the said Housing Society (Proposed) came to be registered under the provisions of the Gujarat Co-operative Societies Act, 1961, on 30/3/1978 for which, a copy of certificate of the registration is produced at page-118 in the paper-book supplied by the appellant. Mr.S.M.Shah has argued that in eye of law, the said Housing Society (Proposed) was not a legal entity to enter into an contract with defendant No.1 and, therefore, that agreement for sale (Mark-3/2) is a nullity and no cause of action can be said to have been arisen on the strength of such nullity contract. To substantiate his arguments, he has cited following authorities.

[A] In the case of Ramji Mandir Narsinhji & Ors. v. Narsinh Nagar Alias Tekri Co.op Housing Society Ltd. & Ors., reported in 1979, 20 G.L.R. 801, wherein the Division Bench of this Court has held that a contract between a non-existent society on whose behalf some one purports to act is a nullity and gives rise to no cause of action. For Housing Society registered under the Co-operative Societies Act, 1961, it is further held that in view of Section 37 of the Gujarat Co-operative Societies Act, it is clear that a Co-operative society becomes a legal person after it is registered and it is after its registration that it acquires the capacity to enter into contracts. No provision of the Act has been pointed out under which the promoters of a society can act on behalf of the society before it has been registered and has come into existence. Ultimately, it has been held that the agreement of lease entered into between the defendant trust on one hand and a non-existent co-operative society on the other hand was a nullity and gave no rise to cause of action for the society and, therefore, such an agreement of lease cannot be specifically enforced against the defendants.

[B] The plaintiff of aforesaid cited case carried the matter further by filing Civil Appeal No.4398 of 1997 to the Hon'ble Supreme Court. Mr.S.M.Shah has cited a xerox copy of certified copy of the judgment dated 1/8/2001 rendered by the Hon'ble Supreme Court in aforesaid Civil Appeal No.4398 of 1997. This Judgment is now reported in 2002 (1) G.L.H. 290 (S.C.). The Hon'ble Supreme Court has upheld the decision taken by this Court and held that the provision of Section 37 of the Gujarat Co-operative Societies Act and Rule 3 of the Gujarat Co-operative Societies Rules, 1965, show that the society becomes competent to acquire, hold and dispose of property only when it is registered and not otherwise. By observing in its judgment, the Hon'ble Supreme Court held that there was no assignment of rights of Nanubhai Jogibhai Desai flowing from the agreement in favour of the Society. It has been held that in absence of such assignment, the Society was not competent to file a suit for specific performance of agreement to sell under the Act. Thus, the aforesaid decision reported in (1979) 20 G.L.R. 801 has been confirmed by the Hon'ble Supreme Court.

[C] The case of Jayantilal Hansraj Shah & Ors. v. Hemkunverben Dolatrai Dave & Ors., reported in 1996 (3), 37 (3) G.L.R. 522. Looking to the facts of the cited case, it is held by this Court that the agreement for sale executed by Late Maharaja Shri Indravijaysinhji in

favour of the petitioners, who are members of the proposed Vijay Co-operative Housing Society is a nullity and creates no right in favour of the petitioners. As the agreement to sell dated July 10, 1980 is nullity, it cannot be specifically enforced and, therefore, even a suit for specific performance of the said agreement cannot be brought by the petitioner in a competent Court. By placing reliance on the aforesaid case of Ramji Mandir Narsinhji & Ors.(Supra), this Court has held that as the agrement to sell dated July 10, 1980 is nullity, it cannot be specifically enforced and, therefore, even a suit for specific performance of the said agreement cannot be brought by the petitioners in a competent Court.

By citing the aforesaid two authorities, Mr.S.M.Shah, learned advocate for the appellant has vehemently argued that basically plaintiff is not entitled to have a cause of action in his favour on the basis of such nullity contract and hence, he is not entitled to a decree for specific performance. When at the end of trial, if plaintiff is not entitled to a decree for specific performance, on the basis of such nullity contract, plaintiff is not entitled to an interim injunction pending the suit.

[b][i] Mr.S.M.Shah has taken an another contention in connection with the Condition Nos.5 and 7 of agreement for sale (Mark-3/2). As per Condition No.5, both the parties of Mark-3/2 i.e. Housing Society (Proposed) and defendant No.1 had to make a joint application for a permission under Sections 20, 21 and 26 of the ULC Act and on such permission being granted by Government defendant No.1 had to execute a final sale-deed in favour of the Housing Society (Proposed) and expanses to be incurred for such final sale-deed, were to be borne equally by both the parties.

[ii] Condition No.7 of Mark-3/2 is to the effect that in case, if permission is not granted by the Competent Authority then in that case, executant of agreement for sale had to give a notice to the first party i.e. Housing Society (Proposed) and on receipt of such notice, the agreement for sale is to be treated as cancelled, as if, no such Banakhat was ever executed. It is also stated in Condition No.7 that under the aforesaid circumstances, when Banakhat is to be treated as cancelled, then in that case, the second party i.e. defendant No.1 shall return an amount of earnest money of Rs.15,000/-- without interest, within 8 days and the first party i.e. Housing Society (Proposed) shall have

to return the said Banakhat to the second party i.e. defendant No.1.

[iii] Mr.S.M.Shah has argued that the appellant has produced a copy of Yadi dated 21/8/1982 addressed to Competent Authority consituted under the aforesaid ULC Act. Copy of this Yadi is at page-119 in the paper-book supplied by the appellant. Copy of this Yadi was endorsed to both the parties i.e. plaintiff and defendant No.1. During the course of arguments, it was contended by the learned senior advocate for the respondent No.1 that this Yadi has not been produced by the appellant i.e. defendant No.1 in the trial Court and, therefore, this document cannot be taken into consideration, for deciding this appeal. During the course of arguments, Mr.S.B.Vakil, learned senior advocate has also placed reliance on this Yadi dated 21/8/1982 for the purpose to show that the present plaintiff and defendant No.1 jointly submitted an application dated 30/4/1980 to the Government and, therefore, ultimately both the parties voluntarily submitted to this Court that this document at page-128 can be taken into consideration by this Court for deciding this appeal.

[iv] Mr.S.M.Shah has argued that the present plaintiff and defendant No.1 both jointly submitted an application dated 30/4/1980 for permission under Section 20 of the ULC Act to the Government and request made in that application was not granted by the Government by this Yadi. He has further argued that after receipt of such intimation regarding rejection of application for permission, the defendant No.1 addressed a suit notice dated 7/5/1991 to the Housing Society (Proposed) and called upon the Housing Society (Proposed) to treat the Banakhat cancelled and return the same to the defendant No.1 and, therefore, when Banakhat is treated as cancelled in terms of Condition Nos.5 and 7 of the agreement for sale (Mark-3/2), plaintiff is not entitled to file the suit for decree for specific performance on the basis of such cancelled Banakhat and, therefore, he is not entitled to any relief at the end of trial. Hence, if he is not entitled to any relief at the end of trial, he is not entitled to any interim injunction pending the suit.

[c] Mr.S.M.Shah, learned advocate for the appellant has contended that looking to the prayer clause-15 of the plaint, the plaintiff has prayed for a relief for decree for specific performance and in the alternative, in Clause-D of para-15 of the plaint, the plaintiff has

prayed for a money decree to recover Rs.15,000/-- being an earnest money plus Rs.1,32,26,000/-being an amount of damages for breach of the contract committed by the defendant No.1. Thus, plaintiff has prayed for a money decree to recover Rs.1,32,41,000/-from the defendant No.1. Mr.Shah has cited an authority of Kanshi Ram v. Om Prakash Jawal and others, reported in AIR 1996 S.C. 2150, wherein it has been observed in para-5 (page-2150) as follows :-

"5.....But it is equally settled law that granting decree for specific performance of a contract of immovable property is not automatic. It is one of discretion to be exercised on sound principles. When the Court gets into equity jurisdiction, it would be guided by justice, equity, good conscience and fairness to both the parties. Considering from this perspective, in view of the fact that the respondent himself had claimed alternative relief for damages, we think that the Courts would have been well justified in granting alternative decree for damages, instead of ordering specific performance which would be unrealistic and unfair. Under these circumstances, we hold that the decree for specific performance is inequitable and unjust to the appellant."

By placing on the aforesaid authority, Mr.Shah has urged that looking to the prayer Clause-D of para-15 of the plaint, when the plaintiff himself has prayed for a money decree to recover an earnest money of Rs.15,000/-and Rs.1,32,26,000/-- as damages for breach of the contract, now plaintiff cannot claim for decree for specific performance. As per his arguments, in these circumstances when decree for specific performance cannot be granted, to plaintiff, the plaintiff is not entitled to an interim injunction, as prayed for, pending the suit.

[d] Mr.S.M.Shah, learned advocate for the appellant has also argued that an agreement for sale (Mark-3/2) was executed on 31/1/1978. As per condition No.2 of this agreement for sale, a time of 12 months was fixed to initiate the proceedings for obtaining a permission from the Government and also to get the title cleared and that period of 12 months was an essence of the contract. There is an endorsement dated 2/10/1978 of defendant No.1 below Mark 3/2 to the effect that defendant No.1 had extended the said period of 12 months, from 12 months to 24 months for the purpose stated in condition No.2.

There is one another endorsement dated 28/1/1980 of defendant No.1 below the said earlier endorsement dated 2/10/1980, below Mark-3/2 and by this second endorsement also defendant No.1 had extended the period of 12 months, from 12 months to 27 months for the purpose stated in condition No.2. Mr.Shah has argued that Mark 3/2 dated 31/1/1978, as per condition No.2 read with condition No.5, proceeding was to be initiated for obtaining a permission from the Government within 12 months i.e. on or before 31/3/1979. As per second endorsement of defendant No.1 below Mark-3/2 that period of 12 months was extended, from 12 months to 27 months and, therefore, the proceedings to obtain permission was to be initiated on or before 30/4/1980. From the record, it appears that the present plaintiff and defendant No.1, both jointly submitted an application for permission under Section 20 of the ULC Act to the Government on 30/4/1980 i.e. within time. As per second endorsement of defendant No.2 below Mark-3/2, that permission sought for by the plaintiff and defendant No.1 by their joint application dated 30/4/1980, came to be refused on 21/8/1982 and, therefore, defendant No.1 addressed a suit notice, as per Condition No.7 to plaintiff and declared that Mark-3/2 was cancelled. On receipt of letter dated 21/5/1982, from the Government, defendant No.1 addressed a suit notice dated 7/5/1991 to the Housing Society (Proposed). From the record, it appears that plaintiff being a registered Society gave a reply dated 8/4/1993 to defendant No.1, wherein a reference of notice dated 30/3/1993 is made in first para of the reply (page-64). Mr.S.M.Shah has argued that no such notice dated 30/3/1993, alleged to have been given by the defendant No.1, has been produced by the plaintiff. As per his arguments, it is the case of the defendant No.1 that he has not given any notice dated 30/3/1993 to plaintiff and, therefore, there is an inordinate delay in giving reply by the plaintiff to the defendant No.1. After giving reply dated 8/4/1993 to the defendant No.1, plaintiff filed a suit on 28/7/1993 i.e. after about three months. Defendant No.1 has contended that plaintiff has not explained the delay for filing the suit, after about three months and, therefore, the plaintiff is not entitled to an equitable relief on the ground of delay. On the point of delay, Mr.Shah has cited an authority of Veetrag Holding Co. Ltd. v. Gujarat State Textile Corporation Ltd., reported in 1996 (3), 37 G.L.R. 536. In that case, contract was terminated on 6/12/1993. It was expected of the appellant to move for specific performance at the earliest, if they were serious about the same. The appellants certainly cannot be non-suited on the ground

of limitation inasmuch as their suit is within time. Still, however, it has been held by this Court that when it comes to grant of equitable relief when the suit is filed on 12/9/1995 i.e. after such a lapse of 1 year, 9 months and 6 days, it cannot be said that the remedy of interim injunction was the necessary remedy and there was no other remedy available to the party concerned in this behalf and, therefore, on this ground of delay also, plaintiff is not entitled to equitable relief.

[e] Lastly, Mr.Shah has argued that plaintiff was in know of the fact that the Government has rejected a joint application dated 30/4/1980 of plaintiff and defendant No.1 for obtaining a permission under Section 20 of the ULC Act. The plaintiff has not referred to about this permission in his plaint and, therefore, he has suppressed the material facts. He has argued that when plaintiff wants an equitable relief, he should not suppress the material fact regarding the rejection of the application dated 30/4/1980, by the Government. On this point, Mr.Shah has cited an authority of Laxmichand Mafatlal Heruwala v. State of Gujarat & Ors., reported in 1996 (3), 37 G.LR. 510. It was a case of writ petition under Article 226 of the Constitution of India. This Court has held that any wilful suppression of any material and vital fact would disentitle the petitioning litigation from obtaining an equitable relief from this Court under Art.226 of the Constitution of India and only on that ground the petition deserves to be rejected.

[f] Mr.S.M.Shah has argued on such other points, which can be dealt with by the trial Court after allowing both the parties to lead evidence in the suit and, therefore, when this Court drew an attention of Mr.S.M.Shah that his arguments on other contentions can only be considered by the trial Court at the end of the trial of the suit, Mr.Shah has fairly conceded to this Court that other points, which, if this Court finds that, that can be decided at the end of trial, may not be considered by this Court and, therefore, such other contentions, for which evidence is required to be led by both the parties, are not taken into consideration, as submitted by Mr.S.M.Shah.

13. Mr.S.B.Vakil, learned senior advocate for and on behalf of Mr.B.G.Jani, learned advocate for the respondent No.1 has argued that looking to the conduct of defendant No.1, it can certainly be said that though at the initial stage, when Mark-3/2 was executed by defendant No.1 in favour of of Housing Society (Proposed), that agreement has been ratified by the

defendant No.1 in favour of the plaintiff and, therefore, the authorities cited by Mr.S.M.Shah are not applicable to this case. He has drawn my attention to two endorsements one dated 2/10/1978 and another dated 28/1/1980 below Mark 3/2 by which a period for the purpose stated in Condition No.2 was first extended from 12 months to 24 months and by putting second endorsement, that very period was extended from 12 months to 27 months. When defendant No.1 put his first endorsement on 2/10/1978 below Mark-3/2, the Housing Society (Proposed) had already become registered Society on 30/3/1978 vide copy of registration certificate at page-118 in the paper-book supplied by the appellant. He has further argued that looking to the Yadi dated 21/5/1982 of Government at page-119, the present plaintiff and defendant No.1 jointly submitted an application for a permission under Section 20 of the ULC Act. When defendant No.1 made a joint application along with plaintiff, then it can certainly be said that the act of defendant No.1 was nothing but an act of ratification and, therefore, now it not be argued by defendant No.1 that suit is based on a nullity contract on this point. He has not cited any authority on point of ratification. Mr.S.B.Vakil has argued that question of grant of a permission under Section 20 of the ULC Act, is still open but because of an inaction on the part of the defendant No.1, Government is not in a position to grant a permission. It is his arguments that as per Banakhat, defendant No.1 had to cooperate the plaintiff for getting permission from the Government, but defendant No.1 has failed to cooperate the plaintiff for getting such permission. Mr.S.B.Vakil has drawn my attention to one letter dated 26/4/1995 of the Government addressed to the Competent Authority constituted under the ULC Act, copy of which was endorsed to defendant No.1 and the Chairman of the plaintiff - Society. In this letter, it is stated that the Government has taken into consideration a decision rendered in the case of S.Vasudev v/s. State of Karnataka & Others rendered by the Hon'ble Supreme Court on 30/3/1993 and by placing reliance on that Supreme Court decision, the Government refused to grant a permission. That case referred to in letter dated 26/4/1995 at page-128 is reported in 1994 (2), 35 GLR 949. That case reported in 1994 (2) 35 GLR 949 has been overruled by the Hon'ble Supreme Court in the case of T.R.Thandur v/s. Union of India and others, reported in 1996 (2) 37 GLR 463 and, therefore, the question with regard to permission under Section 20 of the ULC Act is still open and it cannot be said that the Government has finally decided not to grant permission, in view of the latest decision rendered in T.R. Thandu v/s. Union of

India and others (Supra).

14. [i] Mr.S.B.Vakil, learned senior advocate for the respondent No.1 has argued that it is not a correct law that when plaintiff has prayed for a decree for specific performance and in alternative a money decree for damages on the ground of breach of contract, the plaintiff is not entitled to relief for decree for specific performance. On this point, he has cited an authority of Motilal Jain v/s. Ramdasi Devi (Smt) and others, reported in (2000) 6 Supreme Court Cases 420.

[ii] With regard to contention taken by the learned advocate for the appellant for delay, he has argued that there is no pleading of delay in written statement of defendant No.1. Had the defendant No.1 taken a plea with regard to delay in written statement, plaintiff would have answered it, by filing appropriate affidavit before the trial Court.

[iii] He has further argued that learned advocate for the appellant is not correct to say that period stated in Condition No.2 of Mark-3/2 was an essence of the contract. He has drawn attention of this Court to Condition No.1 of Banakhat at Mark-3/2. As per Condition No.1 a period for execution of Banakhat was fixed for six months from the date on which solicitor's certificate with regard to title clearance is received and also from the date on which permission under Section 20 of the ULC Act is received from the Government. He has then argued that in this case, as per Condition Nos.5 and 6 of Banakhat, proceeding was to be initiated by the defendant No.1 to obtain a permission. In this case, no such permission has been obtained and no title clearance certificate is received from the solicitors, by the defendant No.1 and, therefore, it cannot be said that time was essence of the contract for execution of final sale-deed. He has drawn my attention to last line of Condition No.1 at Mark-3/2, wherein it is stated that in case if necessity will arise then with the consent of both the parties, the period of six months can further be extended. Under the circumstances, this is not a case in which, the time was an essence of the contract.

[iv] Mr.S.B.Vakil, learned advocate for the respondent No.1 has argued that the learned Judge of the trial court has, after considering the documents produced by both the parties, granted an equitable relief in favour of plaintiff and as the scope and ambit of this type of appeal is circumscribed and this Court can not exercise its appellate jurisdiction lightly by interfering with

the decision of the learned Judge of the trial Court.

15. I have considered the rival contentions of learned advocate for both the parties. On taking into dispassionate consideration of submissions made by learned advocates for both the parties, this Court is of the view that following two points are required to be considered.

[a] Admittedly, defendant No.1 is an owner of the suit land described in para-2 of the plaint. It is not in dispute that defendant No.1 executed an agreement for sale dated 31/1/1978 (Mark-3/2) (pages-53 to 59 of the paper-book supplied by the appellant) in favour of four different persons, who were, as per the case of the plaintiff promoters of one proposed housing society namely, Shree Suyog Co-operative Housing Society. In Mark-3/2, which is an agreement for sale, two parties are stated, first party i.e. the person in whose favour that agreement for sale was executed and the second party i.e. a person, who agreed to sell, the suit land to first party. It may be noted that the four persons representing first party of Mark-3/2 have signed (Mark-3/2) in their individual capacities and not as promoters of Housing Society (Proposed), which later on came to be registered, on 30/3/1978 vide copy of registration certificate issued by the Assistant District Registrar, Co-operative Housing Societies, Ahmedabad (page-118 of the paper-book). So, the present plaintiff, which is a registered Co-operative Housing Society came into existence for the first time on 30/3/1978 i.e. after about two months from the date of Mark-3/2. The present plaintiff, which is a registered Co-operative Housing Society has filed this suit mainly for decree for specific performance of aforesaid agreement for sale i.e. Mark-3/2 and consequential relief for decree for perpetual prohibitory injunction restraining defendant No.1 from transferring, selling, assigning or alienating the said suit land by way of sale, mortgage, gift or any other mode, to any third party. Of course, alternatively, plaintiff has prayed for a money decree to recover Rs.15,000/--, which were paid as earnest money by promoters of Housing Society (Proposed) to defendant No.1 together with an amount of Rs.1,32,26,000/-- as damages for breach of contract. Thus, the entire suit is based on Mark-3/2 dated 31/1/1978, which is an agreement for sale. The plaintiff has started to make a construction of the suit on the basis of plinth of Mark-3/2.

As argued by Mr.S.M.Shah, learned advocate for the appellant this Mark-3/2 is a nullity contract or so

to say a void contract. As per his arguments, on the basis of such contract, no cause of action has arisen in favour of the present plaintiff i.e. a registered Housing Society, which came into existence for the first time on 30/3/1978. When the Division Bench of this Court has held in the case of Ramji Mandir Narsinhji & Ors. v. Narsinh Nagar Alias Tekri Co.op Housing Sociey Ltd. & Ors., reported in (1979) 20 G.L.R. 801, that in view of Section 37 of the Gujarat Co-operative Societies Act,1961, it is clear that a co-operative society becomes a legal person after it is registered and it is after its registration that it acquires the capacity to enter into contracts. When the proposed housing society through its four promoters had no capacity to enter into a contract with defendant No.1, it can certainly be said that Mark-3/2 is a void contract. Such type of contract is described by this Court as a nullity contract and such nullity contract gives rise to no cause of action for the registered society, which came into existence two months after execution of Mark-3/2. The aforesaid case Ramji Mandir Narsinhji & Ors. v. Narsinh Nagar Alias Tekri Co.op Housing Sociey Ltd. & Others (Supra) has been confirmed by the Hon'ble Supreme Court by its judgment dated 1/8/2001 rendered in Civil Appeal No.4398 of 1997, a xerox copy of certified copy of judgment has been submitted by Mr.S.M.Shah for perusal of this Court. This case is now reported in 2002 (1) G.L.H. 290 (S.C.). Thus, now, it is a settled principle of law as laid down by the Hon'ble Supreme Court that any agreement entered into by a proposed Housing Society is a nullity contract or so to say a void contract. If this is a legal position, then such type of void contract cannot be enforced by any Court of law. No relief can be granted even at the end of trial on the basis of such void contract. This Court is of the view that when plaintiff, which is a registered Co-operative Society is not entitled to get such type of void contract enforced even at the end of the trial of the suit, plaintiff is not entitled to any decree for specific performance of this contract Mark-3/2. This Court refrains from making any observation on the point as to whether the plaintiff is entitled to a money decree to obtain damages for breach of contract on the basis of such contract. As this appeal has arisen from the impugned order passed below Ex.5 in Special Civil Suit No.236 of 1993, this Court is examining only that impugned order and when that impugned order is being examined by this Court. This Court expresses its view that interim injunction on the basis of agreement for sale Mark-3/2 cannot be granted.

16. Mr.S.B.Vakil, learned advocate for the respondent

No.1 i.e. original plaintiff has tried to convince this Court that Mark-3/2 can certainly be enforced by the Civil Court because the defendant No.1, by his act of ratification allowed the plaintiff to file this suit against him. He has argued that looking to Mark-3/2, defendant No.1 has by putting two different endorsements one of dated 2/10/1978 and another dated 28/1/1980 ratified the contract and as a result of such ratification now this contract cannot be said to be void contract. He has further argued that looking to a copy of Yadi dated 21/8/1982 of the Government in Revenue Department, it is crystal clear that the present plaintiff and defendant No.1 jointly submitted an application dated 30/4/1980 to the Government for grant of permission under Section 20 of the ULC Act. As per arguments of Mr.S.B.Vakil, this act of submitting a joint application by plaintiff and defendant No.1 clearly suggests that defendant No.1 has ratified earlier agreement for sale and, therefore, that contract can legally be enforced by the plaintiff.

16.1 Ratification is the affirmance by a person of a prior act which did not bind him, but which was done or professed to have been done on his account, whereby the act is given effect to, as to some or all persons, as if it had been originally authorized.

16.2 Ratification is an approval of a previous act or contract, which, after it is ratified, becomes the act or contract of the person approving it. It is not a contract to assume such liability. In the case of contracts, ratification is the affirmance of contract already made and as on the date on which it was made. It is neither the making of a new contract to be bound by the old one, or the making of a new contract in the terms of the old one, but the adoption of the old contract itself, as it existed, as if it were made with a previous authority. As soon as an act or contract is ratified it stands on the same footing as an act or contract previously authorized, and not merely as an act or contract whose effect the principal may be estopped to deny. Another feature is that ratification is retrospective, while estoppel operates after the act and in reliance upon it, ratification makes the whole act good from the beginning.

17. Herein this case, the learned Judge of the trial Court has dealt with this important contention of defendant No.1 by observing that by an act of putting two endorsements below Mark-3/2, a birth of new contract has taken place. The learned Judge of the trial Court has

observed in his impugned order that by enhancing the period from 12 months to 27 months for the purpose stated in Condition No.2 of Mark-3/2, a new contract has come into existence on 28/1/1980 and, therefore, now defendant No.1 is a estopped from saying that Mark-3/2 is a void contract. This observation is contrary to well settled legal position with regard to ratification of the contract. It may be noted that defendant No.1 had put two endorsements below Mark-3/2 and that two endorsements are in respect of Condition No.2 which is for a period as to within what period the proceeding should be initiated to obtain a permission from the Government, as also a title clearance from the solicitors. Initially, as per Condition No.2 that period was fixed for 12 months, but subsequently that period was first enhanced by endorsement dated 2/10/1978 of defendant No.1 from 12 months to 24 months and later on by second endorsement dated 28/1/1980 of defendant No.1, that period was further extended from 24 months to 27 months. This Court is of the view that by these two endorsements, it cannot be said that the entire agreement for sale has been ratified by the defendant No.1. At the best, it can be said that by these two endorsements Condition No.2 is ratified and not the entire agreement.

18. It is not in dispute that plaintiff and defendant No.1 jointly submitted an application dated 30/4/1980 to the Government with a request to grant a permission under Section 20 of the ULC Act and act of giving a joint application by defendant No.1, it cannot be said to be an act of ratification of earlier agreement for sale of Mark-3/2, which is in eye of law a void contract. Therefore, this Court is of the view that the entire agreement for sale is not ratified by defendant No.1 merely because defendant No.1 put two endorsements below Mark 3/2 and submitted a joint application to the Government.

19. It is pertinent to note that defendant No.1 gave first notice dated 7/5/1991 to four promoters of Housing Society (Proposed) and not to the plaintiff meaning thereby till 7/5/1991, defendant No.1 did not accept present plaintiff, which is a registered Housing Society as a first party of Mark-3/2. In the case of Mulamchand v/s. State of Madhya Pradesh, reported in AIR 1968 S.C. 1218, it is held that no amount of ratification can valid a void or illegal act. It is held that if the plea of estoppel or ratification is admitted that would mean in effect the repeal of an important constitutional provision intended for the protection of the general public. Herein this case, when admittedly on 31/1/1978,

a proposed Housing Society, which was not registered under the provisions of the Gujarat Co-operative Societies Act, 1961 entered into a contract, that contract itself was a void contract and void contract cannot be enforced. As per Section 28 of the Indian Contract Act, the existence of such a contract shall be a bar to the suit.

20. In view of this legal position though plaintiff's case is worth for consideration on facts, plaintiff is not entitled to a relief for decree for specific performance on the basis of such void contract of Mark-3/2. When plaintiff is not entitled to such relief even at the end of trial, obviously, plaintiff is not entitled to an interim relief at the interlocutory stage and, therefore, on this only legal ground the order, which is challenged in this appeal cannot be sustained and it requires to be set aside.

21. As per Condition No.1 of Mark-3/2, a time was fixed for execution of final deed. This Condition No.1 of Mark-3/2 clearly, suggests that defendant No.1 had agreed to execute a final sale-deed within six months from the date on which title clearance certificate of solicitor as well as a permission under Section 20 of the ULC Act from the Government, are obtained. Condition No.2 suggests that proceeding to obtain a title clearance certificate from solicitor as well as a permission from the Government, was to be initiated within 12 months from 31/1/1978. As discussed earlier that period of 12 months was first enhanced vide endorsement of defendant No.1 dated 2/10/1978 below Mark-3/2 from 12 months to 24 months and subsequently that period was again enhanced vide second endorsement dated 28/1/1980 of defendant No.1 below Mark-3/2, from 12 months to 27 months and, therefore, proceeding as stated in Condition No.2 was to be initiated on or before 30/4/1980 (27 months from 31/1/1978). Condition No.4 of Mark-3/2 further clarified that certificates referred to in Condition No.1 were to be obtained by defendant No.1 and it was his duty to obtain such certificates. Condition No.5 of Mark-3/2 reveals that both the parties had to make an application for permission under Sections 20, 21 and 26 of the ULC Act for suit land to the Government and after obtaining such permission final sale-deed was agreed to be executed by defendant No.1 and expenses for obtaining such permission was agreed to be divided equally by Housing Society (Proposed) and defendant No.1. Condition No.6 suggests that Housing Society (Proposed) was at liberty to move the Government to obtain permission under Section 20 of the ULC Act and against such application, defendant

No.1 had agreed that he would not object. From Yadi dated 21/5/1982 of the Government (Page-119), it clearly suggests that in compliance of Condition Nos.1, 2, 4, 5 and 6, the Housing Society (Proposed) and defendant No.1 jointly submitted an application dated 30/4/1980 to the Government to obtain a permission under Section 20 of the ULC Act i.e. within 27 months from 31/1/1978.

22. Mr.S.M.Shah, learned advocate for the appellant has argued that in view of the aforesaid facts, Condition No.7 is required to be carefully considered at this stage by this Court. Condition No.7 is unambiguous and clear about the intention of the parties. It is stated in Condition No.7 that in case, if permission (permission under Section 20 of the ULC Act from the Government) is not obtained then in that case second party i.e. defendant No.1 agreed to address a notice to first party i.e. Housing Society (Proposed) and on receipt of such notice by first party, it was agreed by Housing Society (Proposed) that transaction would be treated as cancelled as if no agreement for sale was ever executed and in such situation, second party i.e. defendant No.1 agreed to return an amount of Banakhat i.e. Rs.15,000/-- to first party.

Mr.S.M.Shah has vehemently argued that pursuant to Condition No.5 of Mark-3/2 a joint application dated 30/4/1980 was made to the Government and the Government rejected that application. No doubt second party sat silent for a longer period of about 9 years, but in continuation to rejection of application dated 30/4/1980 by the Government, defendant No.1 addressed a notice dated 7/5/1991 to Housing Society (Proposed) and called upon Housing Society (Proposed) to return that Mark-3/2, which was deemed to have been cancelled. Mr.S.M.Shah has argued that once Mark-3/2 is deemed to have been cancelled puruant to Condition No.7 of Mark-3/2 read with Yadi dated 21/5/1982 of the Government and notice dated 7/5/1991, the present plaintiff cannot bring a Civil action on the basis of such cancelled Banakhat. To this, there is no reply from Mr.S.B.Vakil, but Mr.Vakil has argued that proceeding to obtain a permission under Section 20 of the ULC Act has been kept alive by the plaintiff. He has drawn an attention of this Court to a letter dated 20/4//1987 Mark 3/3 (Page-121) of Government addressed to defendant No.1 and one Mohanlal J. Soyantar. From the plaint, it is not clear as to what post of plaintiff Society is held by this Mohanlal J. Soyantar. Mr.S.B.Vakil has further drawn an attention of this Court to letter dated 12/8/1987 Mark-3/4 of the Government addressed to Secretary of the plaintiff

Society. Another letter dated 7/2/1991 Mark-3/7 (page-124) is relied on by the plaintiff. It is a letter of plaintiff addressed to the Government. Mr.S.B.Vakil has argued that because of non-cooperation of the defendant No.1, Government is unable to grant a permission under Section 20 of the ULC Act and further that a bar for inability of the Government to grant a permission under Section 20 of the ULC Act by placing reliance on the case of S.Vasudev v/s. State of Karnataka & Others, reported in 1994 (2) 35 GLR 949, is now out of question because that case S.Vasudev v/s. State of Karnataka & Others (Supra) has been overruled in subsequent decision of the Hon'ble Supreme Court in the case of T.R.Thandur v/s. Union of India and others, reported in 1996 (2) 37 GLR 463. Mr.S.B.Vakil has emphatically argued that a subject with regard to permission under Section 20 of the ULC Act is not yet not closed, though Government has rejected a joint application dated 30/4/1980 of both the parties. He has also argued that ULC Act has now been repealed and now the question does not arise for obtaining permission under Section 20 of the ULC Act. I am unable to accept this argument because we have to examine the rights and obligations of both the parties flowing from Banakhat at Mark-3/2. Once it was agreed to by both the parties that in case, if an application is rejected, then in that case second party was required to address notice to first party and first party was expected to return the Banakhat by treating it as cancelled, in view of Condition No.7 of Mark-3/2. Herein this case, in view of rejection of joint application dated 30/4/1980 by the Government, second party addressed a notice dated 7/5/1991, of course after a long time, but on receipt of such notice by the first party, Banakhat is deemed to have been treated as cancelled and on such cancelled Banakhat, cause of action has not arisen in favour of the plaintiff to file the suit for decree for specific performance of Mark-3/2.

Under the circumstances, once application dated 30/4/1980 is rejected by the Government and once the notice has been given to first party of Mark-3/2, the Banakhat is deemed to have been cancelled as agreed to by both the parties and in that circumstances, this Banakhat cannot be enforced in Court of law.

23. Mr.S.M.Shah has argued that in view of the fact that plaintiff has prayed for a money decree to obtain an amount as damages for the breach of contract in alternate to main relief of decree for specific performance of Mark-3/2 for which he has placed reliance on Kashi Ram v/s. Om Prakash Jawal and others (Supra). This

authority is of 1996. Mr.S.B.Vakil has cited an authority of Motilal Jain v/s. Ramdasi Devi (Smt) and others, (Supra), which is a latest decision of the Year-2000 and, therefore, the arguments of Mr.S.M.Shah are not accepted on this point.

Mr.S.M.Shah has argued on some other points like an amount of damages at a higher value, plaintiff has suppressed the fact with respect to rejection of joint application, absence of pleading, in view of Section 16(c) of the Specific Relief Act and time is an essence of the contract, are not discussed and dealt with, in this judgment because the aforesaid points are such that they cannot be decided finally on the basis of mere pleadings only. Such points can be decided after both the parties are allowed to lead evidence. During the course of arguments, Mr.S.M.Shah has fairly conceded to this Court that if, this Court finds that the arguments advanced by him are on such points, that they can be decided on evidence to be led by both the parties then, that arguments may not be discussed and dealt with in judgment. Under the circumstances, other contentions are not discussed and dealt with as points on which arguments of Mr.S.M.Shah are advanced are such that, they can be decided only on the basis of evidence.

24. In view of what is discussed hereinabove, this Court is of the view that plaintiff is not entitled to a relief for decree for specific performance of Mark-3/2, on only following two points even at the end of trial of the suit and, therefore, at interlocutory stage, plaintiff is not entitled to an interim injunction as prayed for by it in Ex.5.

[A] An agreement for sale Mark-3/2 is a nullity and void contract and it cannot be enforced in Court of law.

[B] In view of the rejection of joint application dated 30/4/1980 for permission under Section 20 of the ULC Act, defendant No.1 performed his obligations as contained in Condition No.7 by addressing notice dated 7/5/1991 and hence, Mark-3/2 is deemed to have been cancelled, as agreed to by both the parties. Such cancelled contract cannot be enforced in Court of law.

25. In view of the discussion made hereinabove, this appeal deserves to be allowed and accordingly it is

allowed. Impugned order dated 24/2/1994 passed below Ex.5 in Special Civil Suit No.236 of 1993, which is still pending on the file of Civil Judge, Ahmedabad (Rural), Mirjapur, at Ahmedabad is hereby set aside and whatever interim injunction has been granted is vacated by this Court, forthwith. Looking to the facts and circumstances, each party shall bear his own costs.

(H.H.Mehta,J.)

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